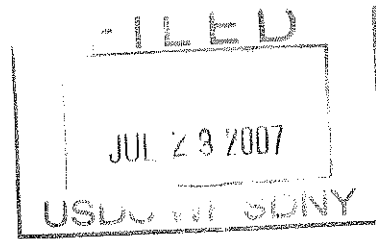


NAP/lmf

06404-51237

#398450

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
CITY OF MIDDLETOWN, MARLINDA DUNCANSON,
INDIVIDUALLY AND IN HER OFFICIAL CAPACITY
AS MAYOR OF THE CITY OF MIDDLETOWN,
ROBERT MOSON, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE COMMON COUNCIL OF
THE CITY OF MIDDLETOWN, MAXINE MEYER,
INDIVIDUALLY AND IN HER OFFICIAL CAPACITY
AS A MEMBER OF THE COMMON COUNCIL OF THE
CITY OF MIDDLETOWN, JAMES ROLLINS,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS A MEMBER OF THE COMMON COUNCIL OF THE
CITY OF MIDDLETOWN, THOMAS J. BURR, IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE COMMON
COUNCIL OF THE CITY OF MIDDLETOWN,
JOHN VANDERVOORT, IN HIS OFFICIAL CAPACITY
AS A MEMBER OF THE COMMON COUNCIL OF THE CITY
OF MIDDLETOWN, GERALD KLEINER, IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE COMMON
COUNCIL OF THE CITY OF MIDDLETOWN, RAYMOND
DEPEW, IN HIS OFFICIAL CAPACITY AS A MEMBER
OF THE COMMON COUNCIL OF THE CITY OF
MIDDLETOWN, AND JOEL SIERRA, IN HIS OFFICIAL
CAPACITY AS A MEMBER OF THE COMMON COUNCIL
OF THE CITY OF MIDDLETOWN,

NOTICE OF REMOVAL

07⁰⁷ CIV. 6572

State Court Index **BRIEANT**
No.: 2007/6035

Petitioners,

-against-

PENCOR-MASADA OXYNOL, LLC,

Respondent.

NOTICE OF REMOVAL PURSUANT TO 28 USC §1441 et seq.

Respondent in the above-captioned proceeding PENCOR-MASADA OXYNOL, LLC, (hereinafter "PMO"), by and through its attorneys TARSHIS, CATANIA, LIBERTH, MAHON & MILLIGRAM, PLLC, hereby files this Notice of Removal in the foregoing case from the Supreme Court of the State of

New York, County of Orange to this United States District Court for the Southern District of New York, and respectfully shows and petitions this Court as follows:

1. On or about the 9th day of July, 2007, a Verified Petition to Stay Arbitration pursuant to Article 75 of the New York State Civil Practice Law and Rules was served on PMO.
2. The proceeding was commenced in the New York State Supreme Court, County of Orange under Index No. 2007/6035. Copies of the Notice of Petition, Petition and annexed exhibits, along with the Request for Judicial Intervention filed in the State Court action are annexed hereto as Exhibit "A" in compliance with S.D.N.Y. Local Civil Rule 81.1(b) and 28 U.S.C. § 1446 (a). To the best of the knowledge of the undersigned, no further proceedings have been had in the State Court.
3. All individual Petitioners are citizens of the State of New York and Petitioner CITY OF MIDDLETOWN is a municipal corporation duly organized and existing pursuant to the laws of the State of New York, with an office at 16 James Street, Middletown, Orange County, New York State. Respondent PMO is a Delaware Limited Liability Company with a principal place of business in the State of Alabama. The arbitration agreement which is the subject of the Petition is governed by the Federal Arbitration Act.
4. Therefore, the within matter is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. §1331 since there is complete diversity among the parties and an amount in controversy in excess of the statutory threshold. Further, federal questions permeate this matter relating to violations of PMO's Constitutional rights made actionable under 42 U.S.C. §1983; and the application of the Federal Arbitration Act (9 U.S.C. §1 *et seq.*).
5. The underlying State Court Petition to Stay Arbitration is brought on by residents of the State of New York against PMO, a Delaware Corporation whose principal place of business is in Alabama. As such, there is complete diversity of citizenship among the parties per 28 U.S.C. §1331.

6. Moreover, the Petition to Stay Arbitration seeks to dismiss certain tort claims as well as certain state and federal Constitutional rights claims which seek damages well in excess of \$75,000.00. As a matter of fact, the complaint in arbitration filed by PMO seeks over \$200 million in damages. *See*, Exhibit "A". The Petition seeks dismissal of these claims for money damages. Accordingly, per 28 U.S.C. § 1332, this Court has diversity jurisdiction since the amount in controversy well exceeds \$75,000.00 in value.

7. Further, there is federal question jurisdiction over the claims asserted in the Petition. The Petition to Stay Arbitration seeks dismissal of certain Federal Constitutional rights claims that have been asserted in the underlying arbitration proceeding by PMO. The basis for dismissal is, *inter alia*, that "public policy" forbids arbitration of PMO's Federal Constitutional rights claims brought under section 1983. Of necessity this claim involves resolution of federal questions as to, *inter alia*, the interpretation of 42 U.S.C. §1983, provisions of the Federal Arbitration Act 9 U.S.C. §1 et seq. which govern the underlying dispute between the City and PMO, as well as broader questions of federal common law, Congressional intent and federal policy.

8. This Notice of Removal is being filed within 30 days from the date of service of the State Court Petition to Stay Arbitration, and as such is timely filed pursuant to 28 U.S.C. § 1446 (b).

9. Venue is appropriate in the Southern District of New York pursuant to 28 U.S.C. Section 1391 (b)(1) and (2) because the Petitioners reside in this judicial district and events in controversy which give rise to the subject proceedings occurred in this judicial district.

10. This matter is properly assigned to White Plains under Rule 21(a)(i) of the Rules for Division of Business Among District Judges for the Southern District of New York since the claim arose in whole or in major part in the County of Orange (a "Northern County") and at least one of the parties resides in the Northern Counties.

NAP/lmf

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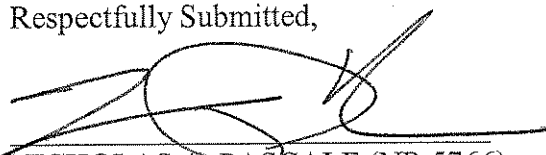
#398450

WHEREFORE, PMO gives notice that the State Court action is removed from the Supreme Court of the State of New York, County of Orange to this Court.

Dated: Newburgh, New York
July 23, 2007

Respectfully Submitted,

By:



NICHOLAS A. PASCALE (NP-5766)
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MAHON & MILLIGRAM, PLLC
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Newburgh, NY 12550
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